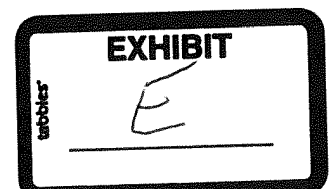


Michael McGrath 10/2/2019

Page 1	Page 3
<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF OHIO</p> <p>3 EASTERN DIVISION</p> <p>4</p> <p>5 MELISSA YATSKO and)</p> <p>6 DARIAN ALLEN,)</p> <p>7 Co-Administrators of the)</p> <p>8 Estate of Thomas Yatsko,)</p> <p>9 Plaintiffs,)</p> <p>10 VS.) 1:18-CV-00814</p> <p>11) JUDGE POLSTER</p> <p>12 SERGEANT DEAN GRAZIOLLI,)</p> <p>13 ET AL.,)</p> <p>14 Defendants.)</p> <p>15 - - -</p> <p>16 VIDEOTAPED DEPOSITION OF MICHAEL MCGRATH</p> <p>17 WEDNESDAY, OCTOBER 2, 2019</p> <p>18 - - -</p> <p>19 The videotaped deposition of MICHAEL MCGRATH, called by</p> <p>20 the Plaintiffs for examination under the Ohio Rules of</p> <p>21 Civil Procedure, taken before me, Stacey Mocz,</p> <p>22 Registered Professional Reporter and Notary Public in</p> <p>23 and for the State of Ohio, at Spangenberg, Shibley &</p> <p>24 Liber, LLP, 1001 Lakeside Avenue, Suite 1700, Cleveland,</p> <p>25 Ohio, commencing at 2:16 p.m., on the date above set</p> <p>forth.</p>	<p>1 On Behalf of Defendant 629 Euclid, Limited:</p> <p>2 THOMAS J. CABRAL, ESQ.</p> <p>3 Gallagher Sharp, LLP</p> <p>4 Sixth Floor Bulkley Building</p> <p>5 1501 Euclid Avenue</p> <p>6 Cleveland, Ohio 44115</p> <p>7 216.241.5310</p> <p>8 tcabral@gallaghersharp.com</p> <p>9 Also present:</p> <p>10 Todd Thibo, Videographer</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2 On Behalf of the Plaintiffs:</p> <p>3 JEREMY A. TOR, ESQ.</p> <p>4 Spangenberg, Shibley & Liber, LLP</p> <p>5 1001 Lakeside Avenue East</p> <p>6 Suite 1700</p> <p>7 Cleveland, Ohio 44114</p> <p>8 216.696.3232</p> <p>9 JTor@spanglaw.com</p> <p>10 NICHOLAS A. DICELLO, ESQ.</p> <p>11 Spangenberg, Shibley & Liber, LLP</p> <p>12 1001 Lakeside Avenue East</p> <p>13 Suite 1700</p> <p>14 Cleveland, Ohio 44114</p> <p>15 216.696.3232</p> <p>16 NDICello@spanglaw.com</p> <p>17 On Behalf of Defendant City of Cleveland:</p> <p>18 MICHAEL J. PIKE, ESQ.</p> <p>19 City of Cleveland Law Department</p> <p>20 601 Lakeside Avenue</p> <p>21 Room 106 - City Hall</p> <p>22 Cleveland, Ohio 44114</p> <p>23 Mpike@city.cleveland.oh.us</p> <p>24 On Behalf of Defendant MRN/Corner Alley:</p> <p>25 PATRICK M. ROCHE, ESQ.</p> <p>Collins, Roche, Utley & Garner, LLC</p> <p>875 Westpoint Parkway</p> <p>Suite 500</p> <p>Cleveland, Ohio 44145</p> <p>216.916.7730</p> <p>Pmroche@cruglaw.com</p> <p>On Behalf of Defendant Sergeant Dean Graziolli:</p> <p>DAVID M. LENEGHAN, ESQ.</p> <p>200 Treeworth Boulevard</p> <p>Suite 200</p> <p>Broadview Heights, Ohio 44147</p> <p>440.653.1246</p> <p>Leneghanlaw@yahoo.com</p>	<p>1 INDEX</p> <p>2 WITNESS</p> <p>3 MICHAEL MCGRATH</p> <p>4</p> <p>5 PAGE</p> <p>6 EXAMINATION BY MR. TOR 9</p> <p>7 EXAMINATION BY MR. CABRAL 75</p> <p>8</p> <p>9 OBJECTIONS:</p> <p>10 MR. PIKE: Objection 10</p> <p>11 MR. PIKE: Objection 12</p> <p>12 MR. PIKE: Objection 13</p> <p>13 MR. PIKE: Objection 14</p> <p>14 MR. PIKE: Objection 16</p> <p>15 MR. PIKE: Objection 17</p> <p>16 MR. PIKE: Objection 18</p> <p>17 MR. PIKE: Objection 18</p> <p>18 MR. PIKE: Objection 19</p> <p>19 MR. PIKE: Objection 21</p> <p>20 MR. PIKE: Objection 22</p> <p>21 MR. PIKE: Objection 22</p> <p>22 MR. PIKE: Objection 23</p> <p>23 MR. PIKE: Objection 23</p> <p>24 MR. PIKE: Objection 23</p> <p>25 MR. PIKE: Objection 25</p>


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Michael McGrath 10/2/2019

<p style="text-align: right;">Page 73</p> <p>1 officer.</p> <p>2 Q. Oh, so --</p> <p>3 A. Was a Use of Force Report made, yes.</p> <p>4 Q. So the officer who uses force isn't the one who</p> <p>5 normally completes the report?</p> <p>6 A. Under these circumstances, on this particular</p> <p>7 incident, I would have to check to see if Officer</p> <p>8 Graziolli, per se, did it or his supervisor did</p> <p>9 it, but the report would be completed, but</p> <p>10 sometimes under very stressful conditions</p> <p>11 somebody else will get the paperwork going to get</p> <p>12 the report moving along and completed.</p> <p>13 Q. Jumping back to the 2014 disciplinary action --</p> <p>14 we talked about that at some length regarding the</p> <p>15 duty reports.</p> <p>16 Based on the information that you had</p> <p>17 available to you at the conclusion of this</p> <p>18 disciplinary process, was Sergeant Graziolli the</p> <p>19 type of officer that you wanted on the Cleveland</p> <p>20 Police Force?</p> <p>21 MR. PIKE: Objection to form.</p> <p>22 Foundation. Calls for speculation.</p> <p>23 A. Relative to that incident in 2014, there were</p> <p>24 mistakes made and Sergeant Graziolli was</p> <p>25 disciplined for those mistakes.</p>	<p style="text-align: right;">Page 75</p> <p>1 questions at this time.</p> <p>2 MR. PIKE: These guys might,</p> <p>3 Director.</p> <p>4 MR. LENEGHAN: I don't have any</p> <p>5 questions.</p> <p>6 MR. CABRAL: Mr. McGrath, I've got</p> <p>7 just very, very little for you.</p> <p>8 My name is Tom Cabral. I represent</p> <p>9 629 Euclid, Limited, which has recently</p> <p>10 been brought into this case, so I'm kind</p> <p>11 of the new guy on the block. I had a</p> <p>12 couple quick questions about the</p> <p>13 secondary employment.</p> <p>14 -----</p> <p>15 EXAMINATION OF</p> <p>16 MICHAEL MCGRATH</p> <p>17 BY MR. CABRAL:</p> <p>18 Q. If I understand your testimony correctly, Mr.</p> <p>19 McGrath -- excuse me. Mr. Graziolli was approved</p> <p>20 by the Cleveland Police Department to engage in</p> <p>21 secondary employment of the kind of nature that</p> <p>22 was occurring on the evening of the incident for</p> <p>23 which we're all here. Is that fair?</p> <p>24 A. That's what I understand right now. Correct.</p> <p>25 Q. Okay. All right. Sergeant Graziolli was, at the</p>
<p style="text-align: right;">Page 74</p> <p>1 Q. So again, sir, my question is: Was that the type</p> <p>2 of officer that you wanted on the Cleveland</p> <p>3 Police Force?</p> <p>4 MR. PIKE: Objection to form.</p> <p>5 Foundation.</p> <p>6 A. You know, that's a difficult question. If I felt</p> <p>7 that I wanted Sergeant Graziolli gone, I would</p> <p>8 have terminated him, but I didn't terminate him.</p> <p>9 I demoted him and suspended him for 30 days. And</p> <p>10 that's how I'm going to respond to that</p> <p>11 particular question.</p> <p>12 Q. Okay.</p> <p>13 MR. TOR: All right. Let me take a</p> <p>14 couple minutes to look over my notes. I</p> <p>15 may have some follow-up questions, and</p> <p>16 then we should be done, okay?</p> <p>17 THE VIDEOGRAPHER: Off the record,</p> <p>18 3:50 p.m.</p> <p>19 -----</p> <p>20 (Thereupon, a recess was had.)</p> <p>21 -----</p> <p>22 THE VIDEOGRAPHER: We're on the</p> <p>23 record at 3:55 p.m.</p> <p>24 MR. TOR: All right, sir. I</p> <p>25 appreciate your patience. I have no more</p>	<p style="text-align: right;">Page 76</p> <p>1 time, fully trained, qualified, an active duty</p> <p>2 police officer. Is that right?</p> <p>3 A. That's correct.</p> <p>4 MR. PIKE: Objection to form.</p> <p>5 Q. He would have undergone training in connection</p> <p>6 with things like -- you were asked about</p> <p>7 de-escalation. That would be an example of the</p> <p>8 kind of thing he was trained in?</p> <p>9 A. Correct.</p> <p>10 Q. All right. And I understand his training record</p> <p>11 is not in front of you right now, but all of our</p> <p>12 officers are trained that way. Is that right?</p> <p>13 A. That is correct. Yes, sir.</p> <p>14 Q. Okay. You testified that it's not uncommon for</p> <p>15 active duty police officers with the City of</p> <p>16 Cleveland to be employed in a capacity as a</p> <p>17 private -- I'll call them a security guard or a</p> <p>18 bouncer or just working at bars and helping to</p> <p>19 provide private security. That's fairly common,</p> <p>20 is it not?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Is that appropriate employment for secondary</p> <p>23 employment for Cleveland Police Officers?</p> <p>24 MR. PIKE: Objection to form.</p> <p>25 A. I've been in the business for 46 years and police</p>

Michael McGrath 10/2/2019

<p style="text-align: right;">Page 77</p> <p>1 officers have worked at different bars and 2 restaurants throughout the City over that 3 timeline. 4 Q. Sure. And having a trained Cleveland Police 5 Officer provides a certain level of expertise and 6 comfort so that bar owners, restaurant owners, 7 want to go ahead and hire these folks? 8 MR. PIKE: Objection to form. 9 A. Yes, sir. 10 Q. Mr. McGrath, would you agree with me that it 11 would be reasonable for the average restaurant, 12 bar proprietor to be able to rely upon a 13 Cleveland Police Officer as to having had 14 appropriate training and to be qualified to fill 15 the role of private security? 16 A. Yes, sir. 17 Q. It would not be reasonable, would it, to expect 18 that each time a Cleveland Police Officer were to 19 be employed in that secondary capacity, we 20 wouldn't expect the proprietor of the 21 restaurant/bar to have to conduct independent 22 background checks as to these individuals? 23 MR. PIKE: Objection to form. 24 A. Correct. 25 Q. The City does all that, right? If there are</p>	<p style="text-align: right;">Page 79</p> <p>1 ----- 2 (Videotaped deposition concluded at 4:00 p.m.) 3 ----- 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 78</p> <p>1 things in the background of these folks that the 2 general public should know about or a proprietor 3 should know about, the City will have already 4 engaged in that check -- 5 MR. PIKE: Objection to form. 6 Q. -- before employing them? 7 A. Yes, sir. 8 Q. Have you ever known of any instance in your 9 40-plus years where a restaurant or bar owner 10 engaged in specialized training in connection 11 with Cleveland Police Officers for this kind of 12 role? 13 A. No, sir. 14 Q. Okay. 15 MR. CABRAL: That's all I have, sir. 16 Thanks so much. 17 THE WITNESS: You're welcome. 18 MR. ROCHE: I don't have any 19 questions. Thank you. 20 THE WITNESS: Thanks. 21 MR. PIKE: We'll read. 22 MR. TOR: We're done. 23 MR. PIKE: Okay. We'll read. 24 THE VIDEOGRAPHER: Off the record at 25 4:00 p.m.</p>	<p style="text-align: right;">Page 80</p> <p>1 ----- 2 CERTIFICATE 3 4 State of Ohio,) 5) 6 County of Geauga.) 7 8 I, Stacey Mocz, RPR and Notary Public within and 9 for the State of Ohio, do hereby certify that MICHAEL 10 MCGRATH was by me first duly sworn to testify to the 11 truth, the whole truth, and nothing but the truth, and 12 that the above deposition was recorded stenographically 13 by me and reduced to typewriting by me. 14 I FURTHER CERTIFY that the foregoing transcript 15 of the said deposition is a true and correct transcript 16 of the testimony given by the said witness at the time 17 and place specified hereinbefore. 18 19 I FURTHER CERTIFY that I am not a relative or 20 employee or attorney or counsel of any of the parties, 21 nor a relative or employee of such attorney or counsel, 22 or financially interested directly or indirectly in this 23 action. 24 25 IN WITNESS WHEREOF, I have hereunto set my hand seal of office at Cleveland, Ohio on this 10th day of October, 2019.</p> <p style="text-align: center;"></p> <p style="text-align: center;">Stacey Mocz, RPR Notary Public in and for the State of Ohio, My Commission Expires May 25, 2020</p>